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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/540,035	03/31/2000	Jay S Walker	99-063	2466
22927	7590	07/05/2005	EXAMINER	
WALKER DIGITAL FIVE HIGH RIDGE PARK STAMFORD, CT 06905			POINVIL, FRANTZY	
			ART UNIT	PAPER NUMBER
			3628	

DATE MAILED: 07/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/540,035	Applicant(s) WALKER ET AL.	
	Examiner Frantzy Poinvil	Art Unit 3628	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 April 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 5,6 and 29-45 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 5-6, 29, 34 and 41 is/are allowed.
- 6) ☒ Claim(s) 30-33, 35-40 and 42-45 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

[Handwritten signature]

DETAILED ACTION

1. In view of the applicant's response filed 4/15/2005, the Examiner withdraws the Restriction/Election requirement, and now issues the following rejection.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 30 and 35 are rejected under 35 U.S.C. 102(b) as being anticipated by Tagawa (US Patent No. 5,732,398).

As per claims 30 and 35, Tagawa discloses a system and method for selling goods and/or services to customers via a computerized system. See the abstract. The system and method comprise determining a sale price based on a product description and a transmitting function to transmit the sale price to a customer. Applicant is directed to column 5, lines 17-32, column 6, lines 7-16 and column 11, line 1 to column 12, line 10 of Tagawa. The limitations of "wherein the customer is not guaranteed what specific product will be purchased before an agreement to purchase a product for the sale price is received from the customer" is interpreted as a list of available flights with their corresponding prices not yet purchased is displayed to a customer in Tagawa (column 5, lines 29-30; column 14, lines 35-63) before an agreement to purchase a

selected flight for the sale price is received from the customer. Agreement is made after a customer swipes his/her credit card and makes payment of a selected flight.

Furthermore, applicant is reminded that such a language of “wherein the customer is not guaranteed what specific product will be purchased before an agreement to purchase a product for the sale price is received from the customer” does not require any steps to be performed or does not limit the claim to a particular structure, and thus attributes to no patentable differences apart from Tagawa.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 31-33, 35-40 and 42-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tagawa (US Patent No. 5,732,398).

As per claims 31, 36 and 42-43, Tagawa discloses a system and method in which a customer searches a product/or service, obtains a list or category of product/service and orders/buys a selected product/service based on the description of the product/or service. The customer then pays for the selected product/service. Applicant is directed to column 5, line 17-32 and column 6, lines 6-16 of Tagawa. The Examiner asserts that if a customer selects and buys a product/service, an agreement to purchase the product/service at a sale price was made between the customer and the seller. Thus, Tagawa teaches functions of a customer making an

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agreement to purchase a selected product/service at a sale price. The steps are not in the claimed order that “after the receiving step, a selecting step to select a particular product to be sold to the customer among a plurality of different products conforming to the product description”. The Examiner asserts that the order of these functions is left to the individual business person having a desire to operate his/her business in this manner. Such does not require any steps to be performed or does not limit the claim to a particular structure, and thus attributes to no patentable difference apart from Tagawa. Furthermore, there appears to be no clear or significant advantages of so doing over Tagawa as such would have been left to the user of the system of Tagawa.

Claims 33, 38, 40 and 45 recite limitations contained in claims 31, 36 and 42-43, and these limitations are rejected under a similar rationale. Claims 33, 38, 40 and 45 are directed to a product/service being an airline ticket or a flight on which the airline ticket will allow the customer to travel. Tagawa is directed to a computerized reservation system in which a user/customer may select and purchase an airline ticket which will allow the customer to travel. Applicant is directed to column 19, lines 35-39 and figure 15 of Tagawa.

Claims 32, 37, 39 and 44 contain limitations recited in claims 31, 36 and 42-43 and these limitations are rejected under a similar rationale. As per the functions of transmitting a step to transmit redemption information, the redemption information identifying the specific product, Tagawa discloses providing a voucher to a buyer of an airline ticket. See figure 15 of Tagawa. The limitation of “wherein the customer is not guaranteed what specific product will be

purchased before the agreement is received” does not require a specific step or structure and thus does not attribute to any patentable differences apart from Tagawa. Furthermore, there appears to be no clear or significant advantages of “wherein the customer is not guaranteed what specific product will be purchased before the agreement is received” over Tagawa as such would have been left to the user of the system of Tagawa.

4. The prior art taken alone or in combination failed to teach or suggest a function of determining a number of flexibility points for each condition in the product description and summing the determined flexibility points as recited in claims 5, 29, 34 and 41.

Conclusion

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frantzy Poinvil whose telephone number is (703) 305-9779. The examiner can normally be reached on Monday-Thursday.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Frantzy Poinvil
Primary Examiner
Art Unit 3628

FP
June 20, 2005